

§ 30-3.3A. Valuation of property.

(a) **Basic Principles.** – Unless otherwise expressly stated to the contrary in this section, the value of property shall be that property's fair market value, taking into consideration any applicable discounts. The value shall be determined as of the date of death, except for (i) property transferred to persons other than the surviving spouse described in G.S. 30-3.2(3f)g. and (ii) property transferred to the surviving spouse described in G.S. 30-3.2(3c)e. that is not held in trust, that is not life insurance, and that is not held as tenants by the entirety or some other form of ownership that passes to the surviving spouse by reason of survivorship. The value of gift property described in clauses (i) and (ii) shall be determined as the value on the date of transfer; but if the donee proves to the satisfaction of the clerk that the value on the date of disposal of the asset prior to the decedent's death is less than on the original date of transfer or that the value on the date of death is less than on the original date of transfer, then the lesser value shall be used.

(b) **Certain Joint Property.** – In valuing a partial interest in jointly owned property with right of survivorship, there shall be no discount taken to reflect the decedent's partial interest including, but not limited to, discounts for lack of control, ownership of a fractional interest, or lack of marketability.

(c) **Certain Powers of Appointment.** – In valuing property over which the decedent held a presently exercisable general power of appointment, the value includes only the property subject to the power that passes at the decedent's death, whether by exercise, release, lapse, default, or otherwise.

(d) **Certain Transfers With Retained Interests.** – In valuing property transferred by the decedent with a retained right of possession or enjoyment or the right to income described in G.S. 30-3.2(3f)e., only the fraction of the property to which the decedent retained a right shall be included. In valuing property in which the decedent created a power as described in G.S. 30-3.2(3f)f., the value includes, with respect to a power, the value of the property subject to the power, and the amount included in the valuation with respect to a power over the income is the value of the property that produces or produced the income; provided, however, if the power is a power over both income and property and the foregoing produces different amounts, the amount included in the valuation is the greater amount.

(e) **Partial or Contingent Interest Property.** – The valuation of partial and contingent property interests, outright or in trust, which are limited to commence or terminate upon the death of one or more persons, upon the expiration of a period of time, or upon the occurrence of one or more contingencies, shall be determined by computations based upon the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, and by using a presumed rate of return of six percent (6%) of the value of the underlying property in which those interests are limited, unless upon good cause shown by one of the parties, the clerk determines that the use of such tables or rate of return is not appropriate, then the value of such interests shall be determined under subsection (f) of this section. However, in valuing partial and contingent interests passing to the surviving spouse, the following special rules apply:

- (1) The value of the beneficial interest of a spouse shall be the entire fair market value of any property held in trust if the decedent was the settlor of the trust, if the trust is held for the exclusive benefit of the surviving spouse during the surviving spouse's lifetime, and if the terms of the trust meet the following requirements:
 - a. During the lifetime of the surviving spouse, the trust is controlled by one or more nonadverse trustees.
 - b. The trustee shall distribute to or for the benefit of the surviving spouse either (i) the entire net income of the trust at least annually or (ii) the income of the trust in such amounts and at such times as the

- trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
- c. The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse.
 - d. In exercising discretion, the trustee may be authorized or required to take into consideration all other income assets and other means of support available to the surviving spouse.
- (2) To the extent that the partial or contingent interest is dependent upon the occurrence of any contingency that is not subject to the control of the surviving spouse and that is not subject to valuation by reference to the mortality and annuity tables set forth in G.S. 8-46 and G.S. 8-47, the contingency will be conclusively presumed to result in the lowest possible value passing to the surviving spouse. However, a life estate or income interest that will terminate upon the surviving spouse's death or remarriage will be valued without regard to the possibility of termination upon remarriage.
 - (3) Repealed by Session Laws 2015-205, s. 4.1, effective August 11, 2015.
- (f) Method for Determining Value. – Unless otherwise stated in this Article, the value of property shall be determined as follows:
- (1) The value of property passing by intestacy described in G.S. 30-3.2(3f)a. and Property Passing to Surviving Spouse, other than property held in a trust, shall be established by the good-faith agreement of the surviving spouse and the personal representative, unless either (i) the surviving spouse is the personal representative or (ii) the clerk determines that the personal representative may not be able to represent the estate adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.
 - (2) The value of property constituting an interest in a trust shall be established by good-faith agreement of the surviving spouse, the personal representative, and the trustee, unless either (i) the surviving spouse is both the personal representative and the trustee or (ii) the clerk determines that the trustee or the personal representative may not be able to represent the trust or the estate, respectively, adversely to the surviving spouse, in which cases the value of such property shall be determined pursuant to subdivision (4) of this subsection.
 - (3) The value of all other property shall be established by the good-faith agreement of the surviving spouse, the personal representative, and the responsible person that received, held, or controlled such property on the date used to determine the value of such property for purposes of determining total assets, unless the clerk determines that valuation under subdivision (4) of this subsection is more appropriate.
 - (4) If the value of any property is not established by agreement as provided above, the parties may present evidence regarding value, which may include expert testimony, and the clerk may appoint one or more qualified and disinterested persons to help determine the value of such property. After hearing, the clerk shall make a finding of fact of the value of each asset. (2009-368, s. 1; 2015-205, s. 4.1.)